

ORIGINAL

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

JUN 30 2008  
at 3 o'clock and 07 min. p M.  
SUE BEITIA, CLERK

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District of Hawaii

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Attorneys for Plaintiff,  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 06-00066 DAE
	)	CR. NO. 03-00495-06 DAE
Plaintiff,	)	
	)	SUPPLEMENT TO MEMORANDUM OF
vs.	)	PLEA AGREEMENT
	)	
ALBERT POWELL, III,	)	
	)	
Defendant.	)	
	)	

SUPPLEMENT TO MEMORANDUM OF PLEA AGREEMENT

RECITALS

A. Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the UNITED STATES OF AMERICA, by its attorney, the United States Attorney for the District of Hawaii, and the Defendant, ALBERT POWELL, III ("Defendant"), and his then attorney, Suzanne T. Terada, Esq., entered into a Memorandum of

Plea Agreement which was filed in the above-captioned cases on February 7, 2006.

B. By the terms of the February 7, 2006 Memorandum of Plea Agreement, Defendant agreed to enter a voluntary plea of guilty to Count 9 (conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h)) of the Indictment in Cr. No. 03-00495 DAE and consented to the criminal forfeiture of \$12,000 in United States currency seized from Defendant on September 22, 2003, as set out in the Information in Cr. 06-00066 DAE. In return, the government agreed to dismiss Counts 1 (conspiracy to possess with intent to distribute in excess of fifty (50) grams of methamphetamine in violation of 21 U.S.C. § 846) and 2 (possession with intent to distribute in excess of fifty (50) grams of methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)) of the Indictment in Cr. No. 03-00495 after sentencing in this case. See Paragraphs 1-4 of the Memorandum of Plea Agreement.

C. A review of the Information in Cr. No. 06-00066 DAE reveals that the forfeiture allegation erroneously cited 21 U.S.C. § 853, the criminal drug forfeiture statute, instead of 18 U.S.C. § 982(a)(1), the criminal money laundering forfeiture statute. As Defendant is pleading guilty to conspiracy to commit money laundering, the criminal forfeiture of the \$12,000 must be based on the offense of conviction -- i.e., money laundering -- and

thus, the forfeiture allegation in the Information should have been based upon 18 U.S.C. § 982(a)(1) and should have read as follows:

COUNT 1

As the result of committing the offense in violation of 18 U.S.C. § 1956(h), as alleged in Count 9 of the Indictment in Cr. No. 03-00495 DAE, Defendant ALBERT POWELL III shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(1), all property, real or personal, involved in such offense, and any property traceable to such property, including but not limited to the following:

\$12,000 in United States currency  
seized on September 22, 2003, from  
Defendant ALBERT POWELL III's  
backpack at the Honolulu  
International Airport.

All in violation of Title 18 U.S.C. § 982(a)(1).

D. In light of the foregoing, the United States and the Defendant and his current attorney, Barry D. Edwards, Esq., hereby agree to the following terms to supplement the February 7, 2006 Memorandum of Plea Agreement.

TERMS AND CONDITIONS

1. Defendant acknowledges that he has been informed of the above-described problem with the forfeiture allegation, and this matter has been fully explained to him by his attorney.

2. Defendant fully understands the nature and elements of the crimes with which he has been charged and the criminal forfeiture allegation.

3. The parties agree that the erroneous citation to 21 U.S.C. § 853 in the Information was inadvertent.

4. Defendant hereby waives his right to receive notice of the intended forfeiture by way of Indictment or Information as required by Fed. R. Crim. P. 32(a), and acknowledges that he has now received complete and accurate notice of the criminal forfeiture.

5. Defendant reiterates his agreement to enter a knowing and voluntary plea of guilty to Count 9 (conspiracy to commit money laundering) of the Indictment in Cr. No. 03-00495 DAE.

6. Defendant reiterates his agreement to forfeit all of his right, title and interest in the \$12,000 in United States currency seized from Defendant's backpack on September 22, 2003, at the Honolulu International Airport (hereinafter the "Subject Property"), pursuant to 18 U.S.C. § 982(a)(1), as property involved in the money laundering conspiracy alleged in Count 9 of the Indictment.

7. Defendant agrees to immediately and voluntarily forfeit to the United States all of his right, title, and interest in the Subject Property and to take all necessary actions to expeditiously implement this forfeiture and to pass clear title to the Subject Property to the United States. These actions on Defendant's part include, but are not limited to, surrender of

title, and the signing of a Preliminary Order of Forfeiture, a Final Order of Forfeiture, and any other relevant documents necessary to effect transfer of title to the United States.

8. Defendant further understands and agrees that the forfeiture of the Subject Property shall not be treated as satisfaction of any fine, restitution, reimbursement of cost of imprisonment, or any other monetary penalty this Court may impose upon Defendant in addition to the forfeiture.

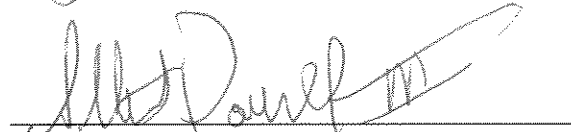
9. The parties hereby reconfirm all other terms and conditions contained in the February 7, 2006 Memorandum of Plea Agreement.


DATED: Honolulu, Hawaii,

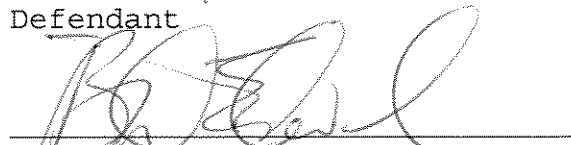
June 30, 2008.

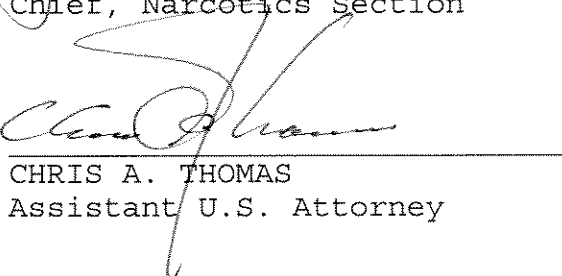
AGREED:

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

  
ALBERT POWELL III  
Defendant

  
FLORENCE T. NAKAKUNI  
Chief, Narcotics Section

  
BARRY D. EDWARDS, ESQ.  
Attorney for Defendant

  
CHRIS A. THOMAS  
Assistant U.S. Attorney

USA v. Albert Powell III; Cr. Nos. 06-00066 DAE and 03-00495-06 DAE; "Supplement to Memorandum of Plea Agreement"